

Memorandum



Development Services

DATE: November 18, 2004

TO: Mayor and City Council

FROM: Lusia Galav, AICP, Deputy Development Services Manager
Steve Venker, Planning & Zoning Manager
Ryan Levesque, Planner I

SUBJECT: Final Draft Zoning and Development Code

At the Issue Review Session (IRS) on October 28th, Mayor and Council directed staff to place the Zoning and Development Code on each upcoming IRS agenda until City Council has finished its detailed review. Approximately half (45 minutes) of each IRS session will be dedicated to this review. Public input would be allowed beyond the usual three-minute time limit. Staff and members of the Planning and Zoning Commission will be available for comment.

At this meeting, staff would like the Council to provide direction on the five regulatory items where the staff recommendation differs from the Planning and Zoning Commission recommendation (Exhibit A). Additionally, staff would like direction on processing Use Permits and Variances (Exhibit B). Please note the Format changes (Exhibit D) are clarifying issues only and there is not necessarily disagreement on these issues. Exhibit E lists the recent public and neighborhood input on the code.

COUNCIL DIRECTION REQUESTED:

Staff requests the Mayor and Council provide direction on the following items:

1. Regulatory recommendations (Exhibit A)
2. Process and procedure recommendations (Exhibit B)
3. Additional direction, as time permits (Exhibit D & E)

ATTACHMENTS:

Exhibit A: Regulatory Issues
Exhibit B: Process and Procedures
Exhibit C: Justification for Staff Recommendations
Exhibit D: Format
Exhibit E: Public/Neighborhood Input
Exhibit F: Executive Summary of the Zoning and Development Code

Exhibit A

REGULATORY ISSUES

Issue	Ordinance 808 Requirements	Planning and Zoning Commission Recommendation	Staff Recommendation
Accessory Buildings	Max. 15' in height; placed in the rear half of lot; if over 8' in height no closer than 7' from property line; max. 25% coverage from rear of building	Max. height of existing residence; meet the setbacks of the district; a use permit is required	DELETE the requirement for a use permit
Bee Hives	Allowed in the Agricultural district Min. 200' from existing dwelling on another property; min. 50' to any property line; min. 150' from any street or bridle path	Minimum 1000' from dwellings, property lines, a streets or bridle path; a use permit is required	Retain current ordinance separation requirements; a use permit is required
Low Water Use Landscape	Limits area of water intensive landscape to 20% except residential units and bona fide city parks less than 10 acres	Additional exception for residential subdivision common areas intended for active recreational use	DELETE the exception for residential subdivision common areas
Freestanding Identification Signs	Shopping centers or lots not part of a center, are allowed one sign per street frontage; counts toward allowable sign area; max. 24 sq. ft. sign area; max. 8' in height	<ul style="list-style-type: none"> - Single use buildings and centers less than 10 acres: max. 32 sq. ft. sign area and 8' height, max. 4 tenants per sign face - Centers 10 acres or greater: max. 40 sq. ft sign area and 10' height, max 6 tenants per sign face 	<ul style="list-style-type: none"> - Single use buildings and centers less than 10 acres reduce to 24 sq. ft. in area -Centers 10 acres or greater reduce to 32 sq. ft. in area
R1-PAD & PAD Overlay	R1-PAD minimum lot size ½ acre	R1-PAD no minimum lot size; PAD Overlay no minimum lot size, not for individual detached single-family dwelling	Add minimum lot size (½ acre) for R1-PAD and PAD Overlay

Exhibit B

PROCESS AND PROCEDURES FOR USE PERMITS

ORDINANCE 808 CURRENT PROCESS

Use Permits	Decision-making body	Appeal body
“Minor” Use Permits	➡ Hearing Officer	➡ Board of Adjustment
“Minor” Use Permits <i>if opposition</i>	➡ Board of Adjustment	
“Minor” Use Permits <i>in connection with other applications</i>	➡ P&Z recommendation, City Council decision	
Use Permits in the Downtown	➡ City Council	
“Major” Use Permits	➡ P&Z recommendation, City Council decision	

PLANNING & ZONING COMMISSION RECOMMENDATION FOR NEW CODE

Use Permits	Decision-making body	Appeal body
“Minor” Use Permits <i>Manager’s decision</i>	➡ Hearing Officer	➡ Board of Adjustment
“Minor” Use Permits <i>Manager’s decision</i>	➡ Board of Adjustment	
“Major” Use Permits	➡ Planning & Zoning Commission	➡ City Council

STAFF RECOMMENDATION FOR NEW CODE

Use Permits	Decision-making body	Appeal body
“Minor” Use Permits ¹	➡ Hearing Officer	➡ Board of Adjustment
“Major” Use Permits ²	➡ Planning & Zoning Commission	➡ City Council

¹ “Minor” Use Permits include requests for residential, bars under 4,500 s.f., commercial under 10,000 s.f., and industrial under 20,000 s.f. in building area.

² “Major” Use Permits include requests for bars 4,500 s.f. or greater, commercial/mixed-use 10,000 s.f. or greater, uses within the PCC-1, PCC-2, RCC, and CC districts, and industrial 20,000 s.f. or greater in building area.

PROCESS AND PROCEDURES FOR VARIANCES

ORDINANCE 808 CURRENT PROCESS

Variances	Decision-making body	Appeal body
All applications	➡ Hearing Officer	➡ Board of Adjustment
If opposition	➡ Board of Adjustment	
If a part of a City Council request for Use Permit, Plan of Development, Planned Area Development, Rezoning, and Subdivisions	➡ P&Z recommendation, City Council decision	

PLANNING & ZONING COMMISSION RECOMMENDATION FOR NEW CODE

Variances	Decision-making body	Appeal body
Manager's decision	➡ Hearing Officer	➡ Board of Adjustment
Manager's decision	➡ Board of Adjustment	

STAFF RECOMMENDATION FOR NEW CODE

Variances	Decision-making body	Appeal body
All applications	➡ Hearing Officer	➡ Board of Adjustment

Exhibit C

JUSTIFICATION FOR STAFF RECOMMENDATIONS

Accessory Buildings, staff recommends deleting the following:

Section 3-401 C. 1. ~~A use permit is required for accessory buildings in the AG and all Single-Family Residential Districts.~~

The first public draft Zoning Code proposed defining accessory buildings and accessory structures. Currently, buildings of this nature are required to be in the rear half of the lot, no greater than 15 feet in height and setback at least 7 feet from all property lines. Accessory buildings are now proposed to meet the setbacks of the zoning district and lot coverage. This change has loosened some of the standards for location of the building and height, while providing greater separation from adjacent properties. Planning Commission's recommendation requiring residents apply for a use permit for an accessory building would place additional processing that is unnecessary for such use. The special standards that are proposed, except the use permit, are adequate enough to regulate this use. As recommended by Planning Commission, a use permit would be required for approval of this type of use.

Bee Hives, staff recommends modifying the following:

Section 3-404 C. Apiaries.

Apiaries, upon the following conditions:

1. Occupied bee hives shall be at least two hundred ~~one thousand~~ (200) ~~1,000~~ feet from any existing *dwelling* on another property;
2. Occupied bee hives shall have a minimum separation of fifty ~~one thousand~~ (50) ~~1,000~~ feet to any *property line*;
3. Occupied bee hives shall have a minimum separation of one hundred fifty ~~one thousand~~ (150) ~~1,000~~ feet to any *street* or *bridle path*; and
4. Apiaries shall require a *use permit*.

This recommendation would retain current distance requirements for bee hives, as well as include the requirement of a use permit for such use. If the distance limitations proposed by the Planning Commission are adopted, an apiary in Tempe would inadvertently become a prohibited use. Apiaries are currently allowed in the Agricultural District with separation requirements. A typical large agricultural lot in Tempe are almost three acres in size (210 feet by 600 feet). These lots could not meet the proposed distance requirements.

Low Water Use Landscape, staff recommends modifying the following:

Section 4-702 B. ~~With the exception of~~ Except for residential units, subdivision common areas intended for active recreational use, individual single family residential units, bona fide city parks of less than ten (10) acres in total area that are intended for use and enjoyment of the general public, whether or not such parks are owned by the city or by private entity, and “turf-related facilities” as then defined by the Arizona Department of Water Resources (ADWR) active Management Plan (Phoenix), all new developments shall conform to the following criteria:

The staff recommendation would retain the current ADWR guidelines which are currently in place. The City of Tempe has an agreement with ADWR to meet these guidelines. The Management Plan has recently been amended. As recommended by Planning Commission, the text does not match the City’s agreement with Arizona Department of Water Resources.

Freestanding Identification Signs, staff recommends modifying the following:

Section 4-903 I.

- a. Single use *buildings* on their own *lot* and complexes and centers less than ten (10) acres in *net site area*, the maximum height of the *sign*, including any supporting *structures* shall be eight (8) feet, maximum area shall be twenty-four (24) ~~thirty-two (32)~~ square feet and the *sign* may identify a maximum of four (4) tenants per *sign* face ; and
- b. All complexes and centers ten (10) acres in *net site area* or greater, the maximum height of the *sign*, including any supporting *structures* shall be ten (10) feet, maximum area shall be thirty-two (32) ~~forty (40)~~ square feet and the *sign* may identify a maximum of six (6) tenants per *sign* face.

This change would support staff’s recommendation to allow twenty-four (24) and thirty-two (32) square feet freestanding signs. There are several additional provisions within the sign chapter that would allow greater sign area and more flexibility in the design of all business signs. The initial public draft did not modify the current standards for freestanding signs. After public input from the Arizona Sign Association, Tempe Chamber of Commerce and other business entities, staff proposed modifications to the sign chapter, including additional area and height for centers ten (10) acres in area or greater. There have been concerns from the public that the proposed code in the sign chapter is deviating too much from what was established as an “excellent sign program”. Staff’s recommendation would not significantly deviate from the quality sign standards that Tempe has established over the years. The Code should be modified as proposed above to retain the initial recommendation. As was recommended by Planning Commission, the size of freestanding signs has been increased.

Planned Area Development Overlay Districts, staff recommends adding the following:
Section 5-402 B.

The *Planned Area Development Overlay District* may be applied to any zoning district in the City of Tempe with a minimum one half (1/2) acre in net site area. A PAD Overlay District may not be used for an individual single *family dwelling*.

Table 4-202A Development Standards in Single-Family Districts.

Minimum Net Site Area: 21,780 s.f. total ~~No Standard~~ for R1-PAD.

The proposed recommendation from staff retains the current requirement for R1-PADs and creates a new requirement for Planned Area Development Overlays to have a minimum size. Both the R1-PAD and the PAD Overlay are established to encourage creativity and flexibility with infill developments when the regular standards are not appropriate. Staff recommends including a minimum net site area of one-half acre for developments requesting these designations. There are several issues that come up on these sites, which fall back to the need of a minimum size: Providing adequate site circulation for resident vehicles and their guests, including parking; storm water retention, providing the 100 year on-site retention is always a difficult task for the applicants; providing quality open space for the project, whether this area allocates enough public or private space for future-users; and neighborhood protection from a stand point that the traditional single-family lot is protected and not further subdivided just to receive maximum profit for a property.

Board of Adjustment, staff recommends retaining the initial intent of the Board of Adjustment as an appeal body for Hearing Officer decisions. As recommended by Planning Commission, the variance application may be heard by either the Board of Adjustment or Hearing Officer, with the Development Services Manager determining the applicable body.

Throughout the rewrite process the intent has been to create a clear and direct process for variances and use permits. As currently recommended by Planning Commission, an applicant may either apply to the Hearing Officer or the Board of Adjustment, by determination from the Development Services Manager. Potentially, the Manager could require all applicants to first be heard by the Hearing Officer. Staff proposes to clarify exactly where the application is processed by simply reading the Zoning and Development Code. Hearing Officer meetings are currently held twice a month, while the Board of Adjustment meeting is held only once a month. The proposed process would provide an applicant a quicker review if there were no issues with the request. The aggrieved party would still be afforded the opportunity to appeal the decision. The request would then be sent to the Board of Adjustment as an appeal.

Preliminary Review Conference, staff recommends modifying the following:

Section 6-202 A. 4. Upon a preliminary review request being filed, staff will notify the applicant or applicant's representative of a preliminary review conference ~~which shall take place within 20 business days of the preliminary review application being filed and be held at the Development Services Department by appointment. After reviewing the information provided from the applicant, staff from the reviewing city departments and divisions will prepare comments. Staff will review the comments with the applicant or applicant's representative at the preliminary review conference and provide information on city code requirements, procedures, and other relevant city policies and regulations. If the city is unable to comply with these time frames, notification will be made to the applicant and proceed as soon as practicable.~~

Staff recommends removing the Planning Commission's recommendation that identifies quantitative time required for Preliminary Reviews. Currently, staff provides preliminary review within ten (10) calendar days after application deadline. A meeting is scheduled with the applicant at the end of that time period, during which staff reviews comments with the applicant. Staff does not want to establish a definitive time that is longer, when the current time frame is less. Preliminary reviews could change and require additional time based on where the city is with development review and available staffing for such review. As recommended by Planning Commission, the review time is twice as long as the time that is accomplished administratively.

Exhibit D

FORMAT

Definitions, staff recommends additional definitions to help clarify land uses and their appropriate districts as listed in the residential, commercial, mixed-use and industrial permitted uses charts.

Massage therapist (modified definition)

Fitness center (new definition)

Childcare, in home (modified definition)

Childcare centers (new definition)

Nursery and day care school (modified definition)

School, Instructional (modified definition)

School, Vocational (modified definition)

Entertainment (modified definition)

Appendix for Retail and Service Uses, staff recommends including a list of retail and service uses which are not described in the Zoning Code's land use chart of permitted uses. This appendix list will help clarify additional uses that fall under the category of general retail or service uses.

Joint Review Committee/MU-Ed District, staff recommends incorporating the new language for creating a Joint Review Committee and the MU-Ed district for projects within a Public University. These items were approved by City Council, amending zoning ordinance 808.

Errata, staff will provide a list of recommended corrections that are intended to clarify the language in the code, typographic corrections, and provide a consistent format throughout the document.

Exhibit E

Additional Public/Neighborhood Input

Listed below are discussion items from the public which may or may not come before the City Council during IRS or the public hearings.

REGULATORY

Chickens
Accessory Dwelling Units
Guest Quarters
Bed and Breakfasts
Home Occupations (family members)
Live-Work
Wireless Telecommunication Facilities
Amateur Radio Antennas
Motor Vehicle Access
Wall heights

PROCESS AND PROCEDURES

Hearing Officer should be out of the City Attorney's office
Fee schedule

Exhibit F

Executive Summary of the September 28, 2004 Final Draft Zoning Code

The existing Zoning Ordinance was established in 1976 and was focused on outward growth. Tempe has since transformed from a growth community to one that is focused on reinvestment, revitalization and redevelopment. The proposed Zoning and Development Code is intended to address Tempe's future development needs. A key to Tempe's future is maintaining a variety of housing options and preserving our neighborhoods. We must also re-establish our shopping and employment options so that Tempe continues to attract new investment and jobs. Sales tax will continue to be a critical part of our economic stability and the proposed Code offers options for revitalizing our shopping centers.

The following is not intended to be a complete recitation of all the new ideas and standards contained in the draft code. It is a list of what we believe to be the major proposals in the draft code. It is important to note that the Code will not rezone any property; it only modifies some standards in existing districts and renames some districts. We have presented the summary in the order in which they occur in the draft code.

Section 1-201 Violations and Penalties. Establish the ability to levy civil sanctions or criminal misdemeanor complaint for violations of the Code.

Section 1-304 Hearing Officer. Currently the Hearing Officer must forward any cases that receive protest to the Board of Adjustment. The new code will allow the Hearing Officer to decide the case and any party can appeal the decision to the Board of Adjustment.

Section 1-306 Planning and Zoning Commission. The authority of the Planning and Zoning Commission is proposed for expansion. They would be able to take final action (unless appealed) on major use permits.

Section 1-308 Design Review Board. Increase the Design Review Board staff's authority to approve expansions for existing buildings up to 5,000 square feet.

Section 1-309 City Council. The Council would only act as an appeal body on decisions for use permits, development plans, and sign permits from the Design Review Board, Redevelopment Review Commission and Planning and Zoning Commission. Decisions on variances would be appealed to Superior Court.

Section 2-102 Residential Districts. The draft code contains a new R-5 multi-family zoning district. This district has a higher density (maximum 30 dwelling units per acre) than we currently have available.

Section 2-103 Commercial Districts. The draft code consolidates the CCR, C-1 and C-2 zoning districts into one district, named the Commercial Shopping and Service District (CSS). This eliminates some duplication of zoning districts and provides a more level field for our smaller commercial properties to compete on. The new district blends the standards and the allowed uses from the three existing districts.

Section 2-103 Mixed-Use Districts. There is also an additional Mixed Use District (MU-3) to fill the gap between the existing MU-2 and MG districts. The MG district is renamed MU-4.

Section 2-104 Industrial Districts. The proposed code renames the Industrial Buffer District to the (LID) to more accurately reflect its intent and uses. It also consolidates the Light Industrial District (I-1) and the General Industrial District (I-2) into the new General Industrial District (GID). These districts currently have the same uses but slightly different standards and the renamed district will use the current I-2 standards so we don't create any non-conforming situations. This will bring the land use classifications more inline with the General Plan.

Table 3-102 Accessory Dwelling Units. The draft code proposes Accessory Dwelling Units to be allowed in multi-family zoning districts. These units are limited in size and require a use permit but can be leased separate from the main house. See Section 3-402 for specific details.

Table 3-102 Animals. The draft code proposes small animals be allowed in residential districts. This would permit a resident to have animals such as chickens, rabbits and other similar small animals up to a maximum of five each. This would exclude roosters and peafowl (peacocks) specifically. The keeping of fowl would still need to follow the regulations that are identified in City Code for separation distance requirements.

Table 3-102 Guest Quarters. There is a proposed change to allow Guest Quarters subject to a use permit in all single family districts. These units could not be leased separate from the main house. See Section 3-411 for specific details.

Table 3-102 Home Occupations. The draft code contains changes to the standards for home occupations. The draft will require a use permit to allow an outside employee, not residing on the premises. See Section 3-412 for details.

Table 3-102 Live-work. The concept of live-work is included in the draft. This is allowed in some commercial and multi-family zoning districts with a use permit and in the CC and MU zoning districts by right. In either case, it would allow two (2) employees. More than two (2) would require a use permit. See Section 3-414 for details.

Table 3-102 Amateur Radio Antennas. There are revised standards for amateur radio antennas (ham radios) in the code. The proposal would allow them up to thirty-five (35) feet in height, but would require a use permit to increase the height, and that they be retractable when not in use. These standards are more liberal than our current ordinance, but don't go as far as requested by amateur radio operators. See Section 3-422 for details.

Table 3-202A Permitted Uses in Commercial. The draft code proposes that most commercial zoning districts can add residential uses to their mix of uses. This would require a use permit and appropriate public hearings. This can encourage reinvestment in some of our aging centers and create a stronger economic base. This will also bring the land use classifications more inline with the General Plan. We have also eliminated the requirement for some zoning districts requiring use permits for all types of uses, and identifying uses that are more appropriate to that commercial district.

Section 4-201 Development Standards. Many of our development standards (heights, setbacks, lot coverage etc) have been revised to reflect what has been approved over the past few years, as well as to provide some additional flexibility in using our limited land resources. These revisions include the concept of allowing a dual set of standards for most scenarios. There would be those rights that are automatically allowed and a second set allowed subject to a use permit. Refer to Tables 4-202A, 4-202B, 4-202C 4-203A, 4-203B and 4-204. This should increase the flexibility in how we use our land yet retain citizen involvement through the public hearing for the use permit.

Section 4-303 Transportation Improvements. The code now contains the standards for public street improvements as well as standards that require traffic calming under certain situations. It also contains requirements for compliance with the standards contained in the Americans with Disabilities Act.

Section 4-400 Building Design. The code contains requirements that qualifying projects must comply with the Public Safety Radio Amplification System to help provide our Fire and Police staff with the tools to safely complete their missions.

Section 4-404 Building Height Step-Back. The draft code proposes a step back in height for projects located adjacent to single-family dwellings as well as multi-family dwellings.

Section 4-500 Access and Circulation. Contains requirements for driveway locations, as well as shade and lighting of pathways. It also establishes construction standards for pathways.

Section 4-603 Parking Maximums. The draft code contains parking maximums. The idea is to preclude excessive asphalt and heat islands when possible. To address some concerns from the development community, it does not apply to multi-phased projects until the last phase is constructed and then only for surface parking. Parking structures and below ground parking are exempt.

Table 4-603E Parking Ratios. The draft code revises some of the vehicle and bicycle parking requirements to reflect what has been approved and functioning over the past few years.

Section 4-604 Shared Parking. Removed the requirement that shared parking requires a use permit. This constraint doesn't seem necessary given the track record for shared parking. Also, the standards for the parking model were adjusted as provided in Appendix F to reflect what has been approved and functioning in Tempe.

Section 4-700 Landscape. The new code proposes to keep the same quality of landscape improvements currently found in Tempe but allow alternative methods of achieving the results. This increased flexibility should result in enhanced landscape improvements that provide more effective and functional shade and visual interest.

Section 4-800 Lighting. Crime Prevention Through Environmental Design (CPTED) standards have been incorporated into the draft code. Currently, CPTED standards are administered as a negotiation during processing. It is believed that by including them into the code, and the fact that CPTED is now administered by the Planning Staff, that these standards will be more readily understood and accepted. Other CPTED standards for building design and landscape improvements are incorporated in those respective sections.

Section 4-900 Signs. Several proposed changes to the sign chapter of the code include:

- The draft code will allow centers to have freestanding multi-tenant signs by right.
- The proposed code will allow centers to have additional freestanding signs. The new standard would allow one sign for every 300 feet of property frontage for the center. This standard is consistent with what has been approved through variances.
- It also allows single use buildings on their own lot to have a freestanding sign.
- Freestanding business/center identification signs would be increased from 24 square feet to 32 square feet in area for sites that are less than 10 acres and allow up to four (4) tenant names per sign face.
- For sites that are 10 acres in size or greater freestanding business/center identification signs would be increased from 24 square feet to 40 square feet in area, up to ten (10) feet in height and allow up to six (6) tenant names per sign face.
- Freeway identification signs: Allows buildings that are located within 300 feet of a freeway to have additional building mounted signs that are oriented to the freeway. This would allow these businesses to have two (2) square feet of sign area for every one (1) foot of building frontage facing the freeway in addition to their other signs. It would also allow a freestanding sign for centers that are adjacent to a freeway. These signs could be 35 feet in height and contain 120 square feet of sign area and must be located within 300 feet of the freeway right of way.
- The allowed height of building mounted signs will be the same as the building height itself.
- Portable signs are prohibited except for real estate lead in signs and boutique directional signs.
- Allow grand opening signs for 30 calendar days with the possibility of extending the time for another 30 calendar days if permanent signs aren't ready.
- Allow significant event signs once per year, for up to 14 calendar days.
- Banner signs would be allowed for special events that are sanctioned by the special events committee.
- Allow apartment communities the same signs for initial lease up as a subdivision is allowed to have.
- Allow places of worship, theaters and museums to have freestanding marquee signs.

Section 5-401 Planned Area Development Zoning Overlay District. The new code contains a Planned Area Development Overlay District. This designation will allow a creative solution to infill parcels and will establish development standards that are unique to the project.

Section 6-304 Specific Plans. The Code reserves a place for Specific Plans. The code initially contained a proposal for the creation and processing of Specific Area Plans but at the request of the Neighborhood Advisory Commission (NAC) we have removed that section from the code. The NAC is working on creating a separate process for the establishment of such documents and will present it at a later time.

Section 6-402 Neighborhood Meetings. The new code establishes the standard that any project that requires a public hearing and is located within 300 feet of a residence or residential zoning district will need to conduct a neighborhood meeting prior to the public hearing. The applicant will be required to post and reasonably maintain the signs for the meeting. Sign size will be either six (6) or sixteen (16) square feet in area depending on the type of request. See Section 6-402 E. for specific details. The applicant will need to provide a written report on the neighborhood meeting to the staff in time for it to be included in the public hearing report.

Section 6-404 Notice for Public Hearings. The Code will require that public hearing signs be no smaller than sixteen (16) square feet in area and be reasonably maintained by the applicant.

Appendixes. Included in the draft code is a series of appendixes that include design guidelines, plant lists, art in private development, shared parking procedures, the fee schedule and a reserved section for future zoning administrator opinions.